

1 MANUEL A. MEDRANO (SBN 102802)

mmedrano@zuberlawler.com

2 **ZUBER LAWLER & DEL DUCA LLP**

350 S. Grand Ave., 32nd Floor

3 Los Angeles, California 90071

Telephone: (213) 596-5620

4 Facsimile: (213) 596-5621

5 BRIAN J. BECK (*pro hac vice*, IL BN 6310979)

bbeck@zuberlawler.com

6 **ZUBER LAWLER & DEL DUCA LLP**

135 S. LaSalle St., Suite 4250

7 Chicago, Illinois 60603

Telephone: (312) 346-1100

8 Facsimile: (213) 596-5621

9 *Attorneys for Claimant*

Rowland Marcus Andrade

10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 ONE PARCEL OF REAL PROPERTY
16 LOCATED AT 9414 PLAZA POINT DRIVE,
17 MISSOURI CITY, TEXAS 77459,

18 Defendant.

19 ROWLAND MARCUS ANDRADE,

20 Claimant.

23 SOLMAZ ANDRADE,

24 Claimant.

25 WILMINGTON SAVINGS FUND SOCIETY,
26 FSB as trustee for IRP FUND II TRUST 2A,

27 Claimant.

Case No. 3:20-cv-2013-RS

**NOTICE OF MOTION AND MOTION OF
ROWLAND MARCUS ANDRADE FOR
LEAVE TO FILE A MOTION FOR
PARTIAL RECONSIDERATION OF THE
COURT'S JULY 17 ORDER;
MEMORANDUM OF POINTS AND
AUTHORITIES**

*Filed concurrently with DECLARATION OF
ROWLAND MARCUS ANDRADE;
DECLARATION OF BRIAN J. BECK; AND
[PROPOSED] ORDER*

Judge: Hon. Richard Seeborg

Trial Date: None Set

Hearing Date: September 3, 2020, 1:30 p.m.

1 **TO UNITED STATES OF AMERICA AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on September 3, at 1:30 p.m., or as soon thereafter as
3 counsel may be heard, in the courtroom of the Honorable Richard Seeborg, located in the United
4 States Courthouse, San Francisco Courthouse, Courtroom 3, Rowland Marcus Andrade, by and
5 through his attorneys, will and hereby does move this Court for LEAVE TO FILE A MOTION
6 FOR PARTIAL RECONSIDERATION OF THE COURT'S JULY 17, 2020 ORDER.

7 Andrade respectfully requests that the Court grant leave to file a motion to reconsider its
8 July 17, 2020 Order (Dkt. No. 52) by: (1) denying the government's motion to stay, and (2)
9 striking its order denying Andrade's motion for sanctions under Fed. R. Civ. P. 11, and ordering
10 the parties to complete briefing on that motion. The basis for Andrade's motion for leave to file
11 under Local Civil Rule 7-9 is that: (1) a material difference in fact exists from the facts presented
12 by the government in its declaration in support of its motion to stay, on which the Court relied in
13 granting said motion; and (2) the Court failed to consider material facts regarding the timeline of
14 the government's filings in this case, the relief requested by Andrade's motion for sanctions under
15 Rule 11, and governing Supreme Court law regarding treatment of pending Rule 11 motions after
16 a plaintiff moves for voluntary dismissal under Fed. R. Civ. P. 41. This Motion is based on this
17 Notice of Motion, the attached Memorandum of Points and Authorities, the Declarations of
18 Rowland Marcus Andrade and Brian J. Beck filed concurrently herewith, all of the pleadings,
19 files, and records in this proceeding, all other matters of which the Court may take judicial notice,
20 and any argument or evidence that may be presented to or considered by the Court prior to its
21 ruling.

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MEMORANDUM OF POINTS AND AUTHORITIES**INTRODUCTION**

In deciding to grant the government's motion to stay this case and to deny Claimant Andrade's motion for Rule 11 sanctions, the Court appears to have not been aware of several facts. First, the Court appears to have believed the government's decision to file the present civil forfeiture action in March 2020 without a parallel criminal indictment was an honest consequence of the COVID-19 pandemic. The government's counsel, Assistant U.S. Attorney Chris Kaltsas, stated in his declaration in support of the motion to stay that around February 10, 2020, he learned that Andrade was liquidating his equity in various assets. In subsequent discussions with Mr. Kaltsas, he clarified that the alleged liquidation had in fact occurred significantly earlier than February 2020; that was merely the date that Mr. Kaltsas personally learned of the alleged liquidation.

Second, the Court granted the motion to stay on a basis the government never requested or claimed existed. Nothing in Kaltsas's declaration in support of the government's motion to stay, or in the parties' subsequent joint status report, suggests that the government will "face a significant burden trying to conduct [] robust civil discovery while also prosecuting its criminal case." Rather, the rationale for the stay raised by the government's original motion was mooted by the indictment, and the government's new conclusory rationales presented in the joint status report are not supported by any factual evidence or sworn declarations.

Third, the Court appears to have been unaware of binding Supreme Court precedent regarding the interplay of Rules 11 and 41 of the Federal Rules of Civil Procedure. The Supreme Court case of *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 397 (1990), which Andrade never had the opportunity to raise because the Court denied Andrade's Rule 11 motion as moot without further briefing, held that a Rule 11 motion is collateral to and survives even a granted motion for voluntary dismissal under Rule 41. It would therefore be an error for this Court to deny Andrade's Rule 11 motion as moot in view of the government's motions to stay and for voluntary dismissal, especially when the government has not even been required to file an opposition to it.

Fourth, the Court has not considered the fact that the government practically admitted to violating Rule 11 in its joint status report (Dkt. No. 49). In the joint status report, the government claimed that it will oppose Andrade's Rule 11 motion as untimely because discovery has not yet opened in this matter, suggesting that the government needs to obtain discovery in order to support its Complaint. But Rule 11 requires the government, like any plaintiff, to conduct a reasonable pre-suit investigation before filing a Complaint. As a matter of basic fairness and professional ethics, the Court should at least require the government to respond to the Rule 11 motion and explain why it believed it had probable cause to file this lawsuit before the Court stays or dismisses this case.

Fifth, the Court's decision to allow the government's motion for voluntary dismissal to proceed but not Andrade's motion for sanctions lacks a logical basis. The Court's explanation for allowing the motion for voluntary dismissal to proceed because of "its potential to dispose of the case entirely." Dkt. No. 52 at 2 n. 3. But Andrade's motion for sanctions has the same potential; the relief it requests is dismissal with prejudice of this lawsuit. There is no reason for the Court to permit the government's motion for dismissal to proceed but not Andrade's.

STATEMENT OF ISSUES PRESENTED

1. Should the Court have granted the government's motion to stay when it was based on a misleading declaration regarding the timing of the government's civil and criminal filings?

2. Should the Court have denied Andrade's motion for Rule 11 sanctions while: (1) the government has failed to explain the basis for its filing, and indicated in its joint status report that further discovery was needed to demonstrate that basis; and (2) the Court continues to entertain the government's motion for voluntary dismissal?

STATEMENT OF FACTS

A. Procedural History of This Case

The government filed its Complaint in this case on March 23, 2020. Dkt. No. 1. The Complaint alleges that Andrade's residence, the defendant parcel of real estate, was purchased using the proceeds of wire fraud that Andrade committed by making false statements about his cryptocurrency, AML Bitcoin, to induce a specific "VICTIM ONE" to purchase that

1 cryptocurrency. Dkt. No. 1 at ¶¶ 8-17, 21, 24. The Complaint further alleges that Andrade's
 2 purchase of the defendant parcel of real estate was a money laundering transaction intended to
 3 hide the proceeds of the alleged wire fraud scheme. *Id.* at ¶¶ 22-24.

4 Andrade mailed his verified claim for the defendant property to the Clerk of this Court on
 5 May 4, 2020. Dkt. No. 10. He filed his Answer to the Complaint on May 18, 2020. Dkt. No. 18.

6 From the outset of this case, Andrade has maintained that the allegations of the Complaint
 7 lack adequate factual basis, even if the allegations state a cause of action for forfeiture. In
 8 particular, Andrade has argued that the key factual allegation underpinning the government's
 9 entire case—that Andrade and his company have made no progress in developing the AML
 10 Bitcoin technology because he spent "investors"¹ money on personal property rather than software
 11 development—is plainly false because AML Bitcoin went into beta testing in November 2019,
 12 and launched in April 2020. Dkt. No. 18 at ¶¶ 20, 32. Andrade also maintains that he was not
 13 involved in any scheme to defraud VICTIM ONE, an individual named Benjamin Boyer, because
 14 he never spoke to Mr. Boyer before he purchased AML Bitcoin Tokens from an individual
 15 referred to in the complaint as "J.D.," and as soon as Andrade discovered in late 2018 that J.D. had
 16 potentially made misrepresentations to Boyer to induce Boyer's purchases, Andrade offered Boyer
 17 a full refund. Dkt. No. 18 at ¶¶ 21, 25, 28, Exs. G and O. Each of these denials is supported by
 18 publicly available documents.

19 Andrade accordingly sought accelerated discovery to determine the basis for the
 20 government's claim. To that end, he filed a motion to shorten time and to immediately enter a case
 21 management order on May 26, 2020. Dkt. No. 22. In response, the government moved to stay the
 22 pending case based on *ex parte* evidence submitted *in camera* on May 28, 2020. Dkt. Nos. 25-26.
 23 The government would not unseal its declaration in support of the motion to stay until July 2, after
 24

25 _____
 26 ¹ The word "investor" is in quotes because Andrade denies that alleged "VICTIM ONE" or any
 27 other purchaser of AML Bitcoin Tokens was an "investor." The terms and conditions provided to
 28 purchasers of AML Bitcoin Tokens made clear that AML Bitcoin Tokens were nothing more than
 a medium of exchange, with no underlying collateral, no share in profit, no debt or obligation to
 the Token owners, and were specifically not securities and not purchased for investment purposes.
 Dkt. No. 18, Ex. J at ¶¶ B.10-18, B.22.

1 briefing on the motion to stay was completed. Declaration of Brian J. Beck in Support of Claimant
 2 Andrade's Motion for Reconsideration ("Beck Decl.") at ¶ 3.

3 With the government refusing to explain the basis for its Complaint, Andrade served the
 4 government with a motion for sanctions under Fed. R. Civ. P. 11 on June 13, 2020. Dkt. No. 48-33
 5 at ¶ 2, Ex. A. The government subsequently filed a criminal indictment against Andrade in this
 6 Court, Case No. 3:20-cr-249, on June 22, 2020, which was subsequently unsealed on June 25,
 7 2020. The true bill is dated June 18, 2020. *United States v. Andrade*, No. 3:20-cr-249-RS, Dkt. No.
 8 1 (N.D. Cal. June 22, 2020). Attorneys for Andrade entered notices of appearance in this case on
 9 June 26, 2020. Dkt. Nos. 37-38. Meanwhile, the safe harbor provision under Fed. R. Civ. P.
 10 11(c)(2) was set to expire on July 6, 2020.

11 Andrade's attorneys reached out to opposing counsel on July 1, 2020, stating that they
 12 intended to file their Rule 11 motion unless the government either withdrew the complaint or
 13 produced the requested evidence. Dkt. No. 48-33, Ex. B. Counsel for the United States responded
 14 saying that the government would not withdraw a complaint that was already found to have
 15 probable cause for an indictment, and still would not produce or identify the evidence supporting
 16 this Complaint. *Id.* Andrade then filed his motion for sanctions, supported by extensive
 17 documentation, on July 8, 2020. Dkt. No. 48.

18 Slightly over a week after Andrade filed his Rule 11 motion, the government apparently
 19 decided that it would withdraw its complaint. On July 17, the government filed a motion for
 20 voluntary dismissal without prejudice. Dkt. No. 51. A mere three hours after the government filed
 21 its motion, the Court entered an order (the "Order") granting the government's motion to stay,
 22 denying Andrade's motion for sanctions without prejudice in view of the stay, but continuing to
 23 entertain the government's motion for voluntary dismissal. Dkt. No. 52.

24 **B. Newly Discovered Facts Regarding the Government's Motion to Stay**

25 The government unsealed the declaration it had filed in support of its motion to stay on
 26 July 2, 2020, by sending a copy of the declaration to Andrade's attorneys by email. That
 27 declaration included the following explanation from Assistant U.S. Attorney Chris Kaltsas as to
 28 why the government filed its civil forfeiture complaint in March 2020:

1 2. On or about February 10, 2020, I learned that the United States Attorney's
2 Office for the Northern District of California was investigating a large scale
3 cryptocurrency fraud involving Rowland Marcus Andrade, a claimant in this case
4 ("claimant"). At that time, I learned that claimant was liquidating his equity in
5 various assets he had purchased with purportedly ill-gotten funds as a result of this
6 scheme, including the real property named in the complaint.

7 Beck Decl., Ex. 1 at ¶ 2. Andrade subsequently informed his attorneys that he had not taken any
8 actions around February 2020 to liquidate assets related to AML Bitcoin, including the defendant
9 parcel of real estate. Beck Decl. at ¶ 4; Declaration of Rowland Marcus Andrade in Support of
10 Motion for Leave to File Motion for Partial Reconsideration (Andrade Decl.) at ¶ 2. . Andrade had
11 put his house up for sale in December 2018, but did not sell it. Andrade Decl. at ¶ 3. Instead, he
12 took out a loan using his house as collateral in April 2019, using the proceeds to fund development
13 of the AML Bitcoin technology. *Id.* Andrade then took out a mortgage on his home in September
14 2019, paying back the April 2019 loan and using the remaining balance for completion of the
15 technology. *Id.* at ¶ 4. He also took a loan out on a separate parcel of land he owned in Corpus
16 Christi, Texas, in February 2019, before selling it in June 2019—again, using the proceeds to fund
17 development of AML Bitcoin. *Id.* at ¶ 5.

18 Andrade's counsel subsequently asked AUSA Kaltsas about this allegation during a phone
19 call on July 14, 2020. Beck Decl. at ¶ 5. Kaltsas answered that he believed February 2020 was
20 when he personally learned of the alleged liquidation, not that February 2020 was when the
21 alleged liquidation actually occurred or when the government more generally learned of it. Beck
22 Decl. at ¶ 5. Kaltsas also said he would check as to when the alleged liquidation actually took
23 place. Beck Decl. at ¶ 5. Kaltsas did not respond before filing the government's motion for
24 voluntary dismissal on July 17, or before the Court entered the Order.

25 In the Order, the Court explained that the government's decision to file its civil forfeiture
26 complaint long before seeking a criminal indictment was reasonable in view of the COVID-19
27 pandemic's interference with court and government operations. Order at 4. But as noted above,
28

1 there was no actual need to quickly file a civil forfeiture proceeding to prevent Andrade from
 2 liquidating the defendant parcel of real estate.

3 Further, the government in fact filed the civil forfeiture complaint on March 23, 2020, after
 4 the Northern District of California issued its General Order 72, dated March 16, 2020, suspending
 5 grand jury proceedings until at least May 2020. Dkt. No. 1, Beck Decl., Ex. 3. Kaltsas's
 6 statements in his declaration that the government "was planning on soon indicting [Andrade] for
 7 his role in the fraud described above" as of March 23, and that the AUSA "did not expect the
 8 current conditions and circumstances to persist for over two months," are thus not consistent with
 9 the timeline of the Court's coronavirus-related orders. As of March 23, 2020, the government
 10 knew it would not soon be able to seek an indictment, and had no reason to rush to file a civil
 11 forfeiture complaint—so the Court should question why in fact the government did so.

12 Andrade's counsel then wrote to Kaltsas again on July 21, 2020, asking for confirmation as
 13 to the meaning of the statement in Kaltsas's declaration. Beck Decl., Ex. 2. Kaltsas responded,
 14 confirming that the alleged liquidation of assets happened before 2020. Beck Decl., Ex. 2.

15 Also in the time between Andrade's filing of his Rule 11 motion and the Order, the parties
 16 filed a Joint Status Report on July 8, 2020. Dkt. No. 49. In the joint status report, the government
 17 stated it would oppose Andrade's Rule 11 motion as untimely and unreasonable. *Id.* at 5. The
 18 government stated that the motion was untimely because discovery had not yet opened in this
 19 matter. *Id.* at 6. The government also stated that the facts underlying the case had been found to
 20 give rise to probable cause to support the indictment against Andrade, demonstrating that the
 21 complaint has adequate factual support. *Id.* However, the government still has not provided even a
 22 cursory explanation of what evidence it has to support either the civil forfeiture complaint or the
 23 indictment.

24 ARGUMENT

25 This Court's Local Civil Rule 7-9 permits a party to move for leave to file a motion for
 26 reconsideration of any interlocutory order on any ground set forth in the rule. A motion for leave
 27 to file a motion for reconsideration must show reasonable diligence in filing the motion, and one
 28 of the following: (1) that at the time of the motion for leave, a material difference in fact or law

1 exists from that which was presented to the Court before entry of the interlocutory order for which
 2 reconsideration is sought; (2) the emergence of new material facts or a change of law occurring
 3 after the time of such order; or (3) a manifest failure by the Court to consider material facts or
 4 dispositive legal arguments which were presented to the Court before such interlocutory order.
 5 Local Civil Rule 7-9(b)(1)-(3).

6 There is no question that Andrade has shown reasonable diligence in filing this motion.
 7 The Court entered the Order on July 17, 2020. Andrade filed this motion less than two weeks later,
 8 on July 29, 2020—and about a week after obtaining confirmation from the government’s counsel
 9 as to the inaccuracy of the implication in the government’s declaration on which this motion is
 10 based.

11 **A. Incorrect statements and implications in the government’s declaration in support of**
 12 **its motion to stay warrant reconsideration of the Order**

13 Because the government kept its declaration in support of its motion to stay sealed until
 14 after the close of briefing, Andrade never had the opportunity to address certain errors and
 15 misstatements in the declaration. Reconsideration is warranted to allow the Court to address those
 16 errors.

17 First, as noted above, the Court excused the government’s decision to file a premature civil
 18 forfeiture action on March 23, 2020, as the result of the pandemic’s interference with the
 19 government’s plan (Order at 4)—but the facts subsequently discovered and confirmed by AUSA
 20 Kaltsas refute the government’s excuse. There was in fact no need for the government to rush to
 21 file a civil forfeiture claim against Andrade because he was not attempting to sell the defendant
 22 property in February 2020. Andrade Decl. at ¶ 2. AUSA Kaltsas confirmed, after the Order was
 23 entered, that his declaration only intended to communicate that he personally learned, in February
 24 2020, of the alleged liquidation—and that the alleged liquidation had in fact occurred long before
 25 February 2020. Beck Decl., Ex. 2.

26 Second, the Court failed to consider material facts that call into question the timeline for
 27 the government’s actions. When the government filed this civil forfeiture complaint on March 23,
 28 2020, this Court had already suspended grand jury proceedings until May 2020. Beck Decl., Ex. 3.

1 The government thus could not have “plann[ed] on soon indicting claimant for his role in the
 2 fraud” as of March 23. The facts that: (1) there was no need to prevent Andrade from imminently
 3 selling the defendant property, and (2) the Court had already entered its General Order No. 72
 4 suspending grand jury proceedings when the government filed the Complaint, seriously calls into
 5 question the government’s good faith. Instead, these facts show that the government rushed to file
 6 an unsupported civil complaint seeking forfeiture of Andrade’s house in the middle of a pandemic
 7 in order to harass him. At a minimum, the additional evidence of the government’s bad faith
 8 should weigh in favor of entertaining Andrade’s Rule 11 motion.

9 Third, the Court failed to address the fact that the government’s purported basis for the
 10 stay was mooted by its filing of the criminal indictment against Andrade. The government’s
 11 declaration in support of its motion to stay made two claims: (1) that allowing Andrade to uncover
 12 the identities of individuals mentioned in the complaint may jeopardize their safety; and (2) that
 13 the government cannot disclose the facts known to law enforcement without disclosing the
 14 existence and nature of the related criminal investigation. Beck Decl., Ex. 1 at ¶¶ 7-8. The former
 15 concern is baseless, as the identity of the individuals referred to in the complaint as “J.D.” and
 16 “VICTIM ONE” was obvious and known to Andrade from a simple comparison of financial
 17 records. Dkt. No. 32 at 7-8. The latter concern was mooted when the government disclosed the
 18 existence and nature of the related criminal investigation by filing a detailed indictment of
 19 Andrade. *United States v. Andrade*, No. 20-cr-249, Dkt. No. 1 (N.D. Cal. June 22, 2020) (unsealed
 20 June 25, 2020). Indeed, the grounds on which the Court granted the government’s motion to
 21 stay—its “significant burden trying to conduct this robust civil discovery while also prosecuting
 22 its criminal case” (Order at 4)—was not even a basis the government raised in its motion to stay.
 23 AUSA Kaltsas’s declaration did not claim that Andrade’s discovery requests would be overly
 24 burdensome, but merely that they would require “disclosing the existence and nature of the related
 25 criminal investigation.” Beck Decl., Ex. 1 at ¶ 8. Nor did the government complain of overly
 26 burdensome discovery requests in the parties’ joint status report, though it raised new rationales
 27 that have never been briefed or supported by sworn declarations. Dkt. No. 49 at 3. Where the
 28

1 government has not claimed that responding to discovery would be overly burdensome, the Court
2 should not have granted a motion to stay based on that supposed burden.

3 **B. The Court's failure to consider material facts and law regarding Andrade's Rule 11**
4 **motion warrants reconsideration of the Order**

5 Andrade's Rule 11 motion was not mooted by either the government's motion to stay or its
6 motion for voluntary dismissal. The Supreme Court has held that a voluntary dismissal under Rule
7 41, even if granted, does not eliminate a Rule 11 violation: "Therefore, a litigant who violates
8 Rule 11 merits sanctions even after a dismissal." *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384,
9 397 (1990). More generally, the Court retains jurisdiction over any claim for attorney's fees even
10 after a dismissal, because claims for attorney's fees are collateral to any decision on the merits.
11 *Moore v. Permanente Medical Grp., Inc.*, 981 F.2d 443, 445 (9th Cir. 1992) (quoting *Cooter*).

12 Andrade has filed a well-supported motion for sanctions under Rule 11. The government
13 may have avoided that motion by dismissing the complaint during the safe-harbor period, but it
14 refused to do so. The government insisted during the safe-harbor period that it "has no intention of
15 withdrawing a complaint based on a case that was already found to have probable cause by a judge
16 for a seizure warrant, and a jury for an indictment." Dkt. No. 48-35. When Andrade called the
17 government's bluff and filed its motion on July 8, the government then sought to withdraw its
18 complaint less than two weeks later, apparently in order to avoid providing an evidentiary basis
19 for its complaint. By denying Andrade's motion for Rule 11 sanctions without even requiring the
20 government to file an opposition, the Court has ignored the Supreme Court's decision in *Cooter*
21 regarding the interplay of Rules 11 and 41, shielded the government's litigation misconduct, and
22 denied Andrade his right to view the evidence based on which the government attempted to take
23 (and is still attempting to take) his residence.

24 The Court's decision to deny Andrade's Rule 11 motion is even more erroneous in view of
25 the government's admissions in the parties' joint status report and the misleading information in
26 opposing counsel's declaration. The government, in the parties' joint status report, argues
27 primarily that the Rule 11 motion is untimely because "[d]iscovery has not yet opened in this
28 matter." Dkt. No. 49 at 6. But "the violation of Rule 11 is complete when the paper is filed," and

1 cannot be saved by future discovery. *Cooter*, 496 U.S. at 395. If the government intended to argue
 2 that it requires discovery to provide an evidentiary basis for its complaint, it has admitted to
 3 violating Rule 11.² If the government is instead arguing that it has an evidentiary basis for its
 4 complaint and would produce it during discovery, then there should be no burden in requiring the
 5 government to produce that basis now—especially if, as appears likely, this case will be dismissed
 6 and discovery will never occur. And the government’s admittedly misleading phrasing in its
 7 declaration in support of the motion to stay should further call into question the credibility of the
 8 government’s complaint.

9 The government’s similar claim that “the facts underlying this case have been found to
 10 give rise to probable cause for both a seizure warrant and an indictment” (Dkt. No. 49 at 6) is
 11 similarly meaningless without an identification of what facts were provided to the warrant-issuing
 12 judge and grand jury, and especially without any discussion of whether the government presented
 13 any known exculpatory evidence to them. If, hypothetically, the government’s indictment relied
 14 primarily on a declaration from Jack Abramoff that Andrade failed to develop AML Bitcoin, while
 15 the government failed to inform the grand jury that AML Bitcoin launched to the public in April
 16 2020, the grand jury’s finding of probable cause would not save the government from having
 17 violated Rule 11. A complaint that states a claim on its face is still frivolous if it is refuted by
 18 dispositive evidence that the plaintiff knew of or should have known of following an adequate
 19 factual investigation. *See, e.g., Christian v. Mattel, Inc.*, 286 F.3d 1118, 1129 (9th Cir. 2002)
 20 (litigant’s allegations of copyright infringement violated Rule 11 where he should have been
 21 aware of dispositive evidence of prior creation).

22 If the government conducted an adequate investigation of its complaint, it should be
 23 trivially easy for it to respond to the Rule 11 motion. Andrade’s Rule 11 motion makes three core
 24 arguments: (1) the statements the government alleges to be fraudulent were either true, believed by
 25 Andrade to be true, or are contradicted by AML Bitcoin’s contracts with customers; (2) there
 26 could not have been a scheme to defraud “VICTIM ONE” because VICTIM ONE was offered a
 27 _____

28 ² And because the Complaint was verified, such an admission would also imply that Bryan Wong
 perjured himself by verifying the complaint.

1 full refund as soon as Andrade discovered the possibility of a misunderstanding; and (3) there
 2 could not have been money laundering because the alleged transactions were ordinary, open, and
 3 made through regular traceable business transactions. All the government needs to do is to identify
 4 its evidence that the allegedly fraudulent statements were false, that Andrade intended to defraud
 5 VICTIM ONE despite the refund offer, and that the transactions at issue were intended to conceal
 6 illicit proceeds. Since it presumably already presented that evidence to the grand jury, and will
 7 have to produce that evidence in the criminal case, there is no good reason the government cannot
 8 provide that evidence now.

9 Finally, the Court's rationale for permitting the government's motion for voluntary
 10 dismissal to proceed but not Andrade's Rule 11 motion is logically flawed. The Court stated that it
 11 would entertain the motion for voluntary dismissal "in light of its potential to dispose of the case
 12 entirely." Order at 2 n. 3. But Andrade's Rule 11 motion has the same potential, as the relief it
 13 seeks is dismissal of the complaint with prejudice together with monetary sanctions. Dkt. No. 48
 14 at 2. If the Court is willing to entertain dispositive motions despite the stay, it should entertain all
 15 pending dispositive motions.

16 CONCLUSION

17 When the Court granted the government's motion to stay, it did not realize that the
 18 government's declaration was deceptively worded. It did not realize that the government did not
 19 have to quickly file a civil forfeiture action in March 2020 to prevent Andrade from imminently
 20 liquidating assets. It did not notice that the government's purported timeline justifying its action
 21 was incorrect—that the government filed its civil forfeiture complaint after the Court had already
 22 suspended grand jury proceedings (an issue that, in view of the government's implausible claim
 23 that it intended to immediately seek an indictment of Andrade after filing the civil forfeiture claim,
 24 raises further concerns about the government's intentions). It granted the stay based on an
 25 apparent burden that the government never raised in support of its motion to stay. The Court also
 26 did not take into account (as it could not, for the parties never had an opportunity to brief the
 27 issue) the Supreme Court's decision in *Cooter* regarding a Rule 11 motion's surviving a Rule 41
 28 voluntary dismissal. Nor did it take into account the government's apparent argument in its joint

1 status report that it required discovery to begin before responding to Andrade's Rule 11 motion.
2 And it failed to take into account that Andrade's Rule 11 motion, like the government's motion for
3 voluntary dismissal, could dispose of the case entirely. In light of all these newly discovered facts
4 and unaddressed binding law and factual inconsistencies, Andrade respectfully requests that the
5 Court grant leave to file a motion for partial reconsideration of the July 17 Order.

6
7 Dated: July 29, 2020

Respectfully submitted,

8 By: /s/ Manuel A. Medrano

9 MANUEL A. MEDRANO (SBN 102802)

mmedrano@zuberlawler.com

10 **ZUBER LAWLER & DEL DUCA LLP**

350 S. Grand Ave., 32nd Floor

11 Los Angeles, California 90071

Telephone: (213) 596-5620

12 Facsimile: (213) 596-5621

13 BRIAN J. BECK (*pro hac vice*, IL BN 6310979)

bbeck@zuberlawler.com

14 **ZUBER LAWLER & DEL DUCA LLP**

135 S. LaSalle St., Suite 4250

15 Chicago, Illinois 60603

Telephone: (312) 346-1100

16 Facsimile: (213) 596-5621

17 *Attorneys for Claimant*

18 *Rowland Marcus Andrade*